endorsed by J. P. Kridler, and also purporting to be endorsed by Henry Shirk; and if they further find that the names of Edward Dunn and Henry Shirk, as drawer and endorser of said note, were forgeries, that then the plaintiffs are entitled to recover such sum as they may find was paid by them to the defendant for said paper, notwithstanding they may find that the defendant acted as an agent in said sale, unless they also find that the defendant at the time of such sale disclosed the name of the person or persons for whom he acted as agent in such transaction.

A verdict was rendered for the plaintiffs.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania, January, 1856.

Amendment—Judgment on Warrant.—Where a judgment on bond and warrant is, by mistake, entered for less than the sum specified in the latter, it may be amended according thereto, on application of the plaintiff, at any time, even after execution issued and the amount collected, saving, however, the rights of third persons. *Smith* vs. *Hood & Co.* From Greene Co.

Criminal Law—Accessory.—Though an accessory cannot be *tried*, he may be *indicted* before the conviction or outlawry of the principal; and, unless it affirmatively appear upon the record of the conviction of an accessory, that the principal has never been convicted or outlawed, the judgment will not be reversed, as it must be presumed on error, that legal proof of the fact was made before the jury. *Andrew H. Holmes* vs. *The Comm.* From Fayette Co.

Courts—Criminal Law.—A Court of Quarter Sessions has jurisdiction under the Act of 1836, of indictments for all crimes, &c., except those which are enumerated in the Fifteenth Section of the Act, as within the exclusive jurisdiction of the Court of Oyer and Terminer and general gaol delivery; and hence of an indictment for being accessory to a burglary, and receiving the stolen goods. *Ibid.*

Criminal Law—Error.—In felonies not capital, it is to be presumed on error that everything was rightly done at the trial, until the contrary

appears. Hence, in such cases, a judgment will not be reversed, because it does not affirmatively appear on the record that the defendant was present at the rendition of the verdict. *Ibid.*

Ejectment—Trespass.—Trespass will not lie against a stranger who removes personal property from land recovered in ejectment, after judgment, but before entry or execution of a *hab. fac.*, under a purchase from the defendant. After A had recovered in action of ejectment against B, but before actual possession taken, C, under a license from B, cut a quantity of timber on the land, which A subsequently converted to his own use, B recovered in two subsequent ejectments. *Held*, that C could maintain trespass against A, for the timber. *King & Shoenberger* vs. *Baker.* From Cambria Co.

Evidence, Parol, to Vary Written Contract.—The plaintiff, in an action of trespass, had released to the defendant, a Plank Road Co., the right of passage over the *locus in quo*, for the construction and use of the road. The release was in writing, and in the usual form: *Held*, that parol evidence was not admissible on his part, to show that the release was signed by him, on the express condition that it was to be binding only in case the road should be located on a particular route, and that it was not so located. *Kennedy* vs. *The Erie and Wattsburgh P. R. Co.* From Erie Co.

Execution—Exemption.—A defendant, in an execution levied on the whole of a lot owned by him, gave notice of an intention to claim the benefit of the exemption law. No sale was made on this writ. Afterwards another execution was issued on another judgment, and a part only of the lot was levied on. No notice was given in the latter case: *Held*, on distribution of the proceeds, that the defendant had waived his right, and that even if the same person were plaintiff in both levies, it would make no difference. *Dodson's Appeal.* From Westmoreland Co.

Execution—Lien of Mortgage—When Discharged.—Where a mortgage (other than one for purchase money,) and a judgment are entered up on the same day, the mortgage is not a prior lien under the Act of 1830, but will be discharged by a sale on a subsequent judgment. *Magaw* vs. *Gavitt.* From Mercer Co.

A purchaser at Sheriff's sale is not affected by anything which does not appear on the record, and of which he has not notice. Hence, where a mortgage and judgment were entered on the same day, and the latter

appeared on the record to be unsatisfied at the time of a sale of the mortgaged property on a subsequent judgment, it was held that the purchaser took discharged of the mortgage, though in point of fact the first judgment was actually paid, and the mortgage thus the first lien. *Ibid.*

Justice of the Peace—Appeal.—Under the Act of March 20th, 1845, a defendant is given a right of appeal from a judgment of a justice, or award or referees, in addition to that given by the Act of 1814, only in cases where, under the existing law, the plaintiff would have had the right. Hence, where there is an award of referees for the plaintiff, for less than twenty dollars, and the difference between its amount and that claimed is also less than twenty dollars, the defendant cannot appeal. *Cook* vs. *Dunkle.* From Clarion C. P.

Landlord and Tenant—Apportionment.—Where a railroad company, having authority by law to take property for the purposes of the road, purchases under that compulsion from a landlord, a portion of the demised premises, and then proceeds to evict the tenant therefrom, without compensation, the tenant is not thereby discharged from the payment of the whole rent, but the latter is apportioned from the moment the sale is made. *Linton* vs. *Hart.* From Dist. Ct., Allegheny.

Limitations—Mutual Accounts.—Where there have been mutual accounts between two persons within six years, the statute of limitations does not apply to any portion of either account. It is not material that both accounts are kept by one of the parties; and *qu.* whether it is necessary that they should have been kept in writing at all. Though merely entering a credit in such case within six years, will not take all the account out of the statute; yet if it be proved that the items of credit were actually delivered on account, and credited agreeably to the defendant's request, this exception to the statute applies. *Chambers* vs. *Marks.* From Westmoreland Co.

Limitations.—Within the period of the statute of limitations, the widow of S. who had died in adverse possession of land, but with no other title, and herself in possession, gave up the land to the legal owner, on threat of being turned out by the sheriff. *Held,* that the continuance of the adverse possession was interrupted, and that the heirs of S. could not recover on a statutory title. *Shaffer* vs. *Lowry.* From Indiana Co.

Master and Servant—Clerk.—A person employed as the Secretary of a private corporation, at a fixed rate of compensation, cannot demand extra

pay for services in that capacity which were not anticipated at the time of his appointment, or which were not enumerated in the charter or by-laws. The fair construction of his contract is, that he will do whatever his employers have occasion to employ him about. *Carr* vs. *Chartiers Coal Co.* Allegheny Co.

Partnership—Lien of Partner.—Articles of copartnership in the lumber business, charged all the avails or proceeds of the business with the payment of advances made by any of the partners. A. became a partner in the business on the basis of these articles, and the partnership being subsequently dissolved, he remained in possession of the saw mill and certain lumber in the raw state. *Held*, that he had a lien on the lumber for his advances, and his expenses in preparing it for market, and was entitled to retain it therefor as against the purchaser of the interest of another partner, which was less that the amount of A's claim. *Hall* vs. *Hyde.* From Elk Co.

Held also, that A. might then claim credit for advances actually made, but which, by mistake, had not been included in a previous settlement with his former partners. *Ibid.*

Partnership—Judgment.—On the distribution of the proceeds of a sheriff's sale of partnership property, the holder of a judgment nominally against only one of the partners, may show that it was in fact founded on a partnership debt, and thus entitle it to rank with judgments against the partnership. *Maus* vs. *The Comm.* From Fayette Co.

The test of a partnership debt is whether one of the partners could have paid it, and then claimed a credit therefor in the partnership accounts. Therefore, where debts are incurred by one in carrying on business alone, and he afterwards enters into a partnership, and it is stipulated at the time that those debts shall be paid by the firm, they become partnership debts. *Ibid.*

Practice—Interpleader.—The common law process of interpleader, has never been abolished in Pennsylvania. Practice thereunder stated. *Brownfield* vs. *Carron.* From Fayette Co.

Where, though the defendant has taken issue on the plaintiff's claim, the garnishee chooses to come in voluntarily, and make himself a party, and is accepted as such, and a judgment is given against him, he cannot afterwards object to the irregularity. *Ibid.*

Though in general on a recovery by the plaintiff, the judgment ought to be against the defendant for the debt or thing claimed, and against the

garnishee or party intervening for the damages and costs, yet where the defendant has paid or transferred to the garnishee the debt or thing claimed pending suit, the latter cannot complain of a judgment against him for the whole. *Ibid.*

Practice—Proof of lost record—Case stated.—A case was stated for the opinion of the court, and afterwards lost. The court referred it to a commissioner to take testimony as to its contents, and gave judgment on his report. *Held*, entirely irregular, and judgment reversed for that reason. *Cook* vs. *Shrouder*. From Allegheny Co.

Sale of Chattels—When Property passes.—Where the parties to a contract of sale of personal property had agreed upon the terms, and the mode of ascertaining the weight of the article, and part of the price had been paid without delivery; but the agreed means of weighing afterwards failed, and the vendor refused to adopt any other means, it was held that the property had not passed. *Nesbit* vs. *Barry*. From Lawrence Co.

Set off—Partner.—One of two partners assigned a debt due to him in his individual right, by one who was also a creditor of the firm, to a separate creditor, in satisfaction of his debt. A suit being brought in the name of the former, and the other partner dying after plea, the defendant pleaded as a set-off, the partnership debt. *Held*, that though by the death of one of the partners, the debts became mutual, yet the previous appropriation of the separate debt to the separate creditor, was a bar to the set-off. *Walker* vs. *Eyth*. From Butler Co.

Tax Sale.—A mere intruder cannot set up any objection to the validity of a tax sale, on the ground of irregularities therein, however gross. *Query*, if he could even take advantage of the fact of the actual payment of the taxes by the original owner before sale, as against a purchaser without notice. *Cram* vs. *Burke*. From Cambria Co.

The payment of the taxes on a portion of the land, by a stranger without title, in such case, the whole of the land having been sold, held not to be available on the part of a subsequent intruder to defeat a tax title. *Ibid.*

Will—Devise—Presumption of life of devisee.—As against parties claiming under a will, a devise therein to a particular person by name, is *prima facie* evidence of the existence of such person at the date of the will, unless there are expressions in the instrument which throw a doubt on the question. *Crow* vs. *Kightlinger*. From Indiana Co.

Will—Devise to a class.—Devise that certain land "shall be equally

divided among R's children, he and they enjoying the benefits of it while he lives." *Held*, that all of R's children living at his death, and not merely those living at the death of the testator, were entitled. *Huskins* vs. *Tate*. From Fayette Co.

Supreme Court of Texas, 1854—1855.[1]

Constitutional Law—Criminal Law.—Where one count in an indictment embraces two offences of different grades, a conviction of the inferior offence is an acquittal of the higher, and upon a new trial, the defendant cannot be tried and convicted of the higher offence. *Jones and Jones* vs. *The State.*

Criminal Law—Slaves.—Slaves are persons within the meaning of the statute concerning crimes; and where not otherwise provided, or where the relations arising out of the institution of slavery do not imply the reverse, the statutes enacted for the punishment of crimes, and especially crimes committed by violence to the person, apply equally to crimes committed by, or upon the person of a slave. (*Chandler* vs. *The State*, 2 Tex. R. 305.) *Nix* vs. *The State.*

Damages.—The measure of damages on breach of a contract to deliver chattels, where the purchase money has been paid, is the highest price at any time between the time appointed for delivery and the day of trial, and interest from the time appointed for delivery. *Calvit* vs. *McFadden.*

Damages—Principal and Agent.—Where one collects money for another and refuses to pay it over, the jury may allow damages for the detention, and the measure of damages in such cases is the lawful rate of interest. *Close* vs. *Fields.*

Evidence—Practice.—It is always a question addressed to the discretion of the Court, to determine whether the basis has been laid by proving the loss or destruction of a record, to let in parol proof that such record once did exist. This discretion is not an arbitrary, capricious discretion, but must be a reasonable conclusion from the evidence. But, unless the Court in error were fully satisfied from the evidence, that the Court below erred in the exercise of its discretion, they would not be authorized to reverse its decision. *Mays* vs. *Moore.*

[1] Volume 13 of Texas Reports.

Injunction.—An injunction will not be refused merely because the defendant is in possession under an adverse claim of title. *Burnley* vs. *Cook.*

The ancient practice of the Court of Chancery was, not to intefere by injunction in cases of trespass, but to leave the party to his legal remedy. But the practice of the court is now more liberal; and in cases of trespass, it excepts a strong case of destruction or irreparable mischief.

Interest.—Where a promise to pay money is not dated, and no time is fixed for payment, interest runs from the date of the delivery. *Van Norman* vs. *Wheeler.*

Judgment of another State.—Where in the record of a judgment of a court of another State, a *capias ad respondendum* had been issued for the defendant, and was returned "executed personally," it was held to be sufficient *prima facie*, to show jurisdiction of the person of the defendant. *Reid* vs. *Boyd.*

If the transcript of a judgment of a court of record of another State is properly certified, and it appear therefrom, however informally, that the Court had jurisdiction of the persons of the parties and of the subject matter, and rendered judgment therein, the transcript entitles the plaintiff, *prima facie*, to a recovery. *Houston* vs. *Dunn.*

Jurisdiction.—The acts of the Mexican authorities in the territory adjacent to the Rio Grande, while that territory remained *de facto* under their control, although subsequent to the declaration of her boundary by the Republic of Texas, in the ordinary administration of the laws and municipal affairs, so far as individuals were concerned, were as valid and binding as if done by the government *de jure* as well as *de facto.* *Trevino* vs. *Fernandez.*

Lands.—The words "*censo al quitar*" in a composition grant do not signify that a tenancy at will only is thereby conveyed, as translated in White's Recopilacion, (2 vol. p. 53,) but that the land is conveyed subject to an annuity or ground rent, redeemable at the will of the grantee. *Ibid.*

The *media annata* were not the rents payable half yearly, as suggested in the case of *McMullin* vs *Hodge,* but the half of the estimated income or rent for the first year; and they were chargeable not only on composition, but on all grants, titles and offices whatever. *Ibid.*

Limitation—Accounts between merchant and merchant.—The exception in the statute of limitations, as to the accounts between merchant and merchant, includes only accounts current, where there are various charges and credits on each side, and not accounts which consist entirely of charges on one side and payments on the other. *Judd* vs. *Sampson & Co.*

Limitation—Judgment of a sister State.—A judgment of a Court of record of a sister State is barrable only by the space of time which would cut off suit on a domestic judgment, viz: ten years. *Clay* vs. *Clay.*

Limitation—Foreign Judgment.—It seems that an action on a foreign judgment, not being a judgment of one of the United States, will be barred in four years. *Reid* vs. *Boyd.*

Practice—Law and Equity.—The general rule, where law and equity are administered in separate forums, is that damages must be sought at law, and specific performance in equity. But this has no proper application, where the jurisdictions are blended, and where, therefore, both objects may be embraced in the same suit, and where consequently, the prayer may be in the alternative, and where, if one relief fails, the other may be awarded, if, on the principles of law or equity, either the one or the other can be granted. *Mitchell* vs. *Sheppard.*

Practice—Common Law.—The rules of the common law have never been considered obligatory, as matters of absolute principle, on questions of practice; but our courts have either adhered to their former practice, or have adopted such rules of their own, as seemed dictated by considerations of policy and convenience, rather then pursue the common law practice, where the rule which it afforded was found to be unsuited to our system, or inconvenient of application. *Grassmeyer* vs. *Beeson.*

Witness.—Interest is no objection to the competency of a witness to testify in a matter involving a question of practice addressed to the discretion of the court. *Gillespie* vs. *Redmond.*